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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, A. D. 1945

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**No. 385**

**WILLIAM JEFFRIES, JR., CHARLES R. AIKEN,**  
ADMINISTRATOR DE BONIS NON OF THE ESTATE OF WIL-  
LIAM JEFFRIES, DECEASED, DRAPER AND KRAMER,  
INCORPORATED, A CORPORATION, AND CHICAGO  
TITLE AND TRUST COMPANY, A CORPORATION  
AS TRUSTEE, ETC.,

*Petitioners,*

vs.

**NELLIE JEFFRIES AND HARPER FRENCH,**

*Respondents.*

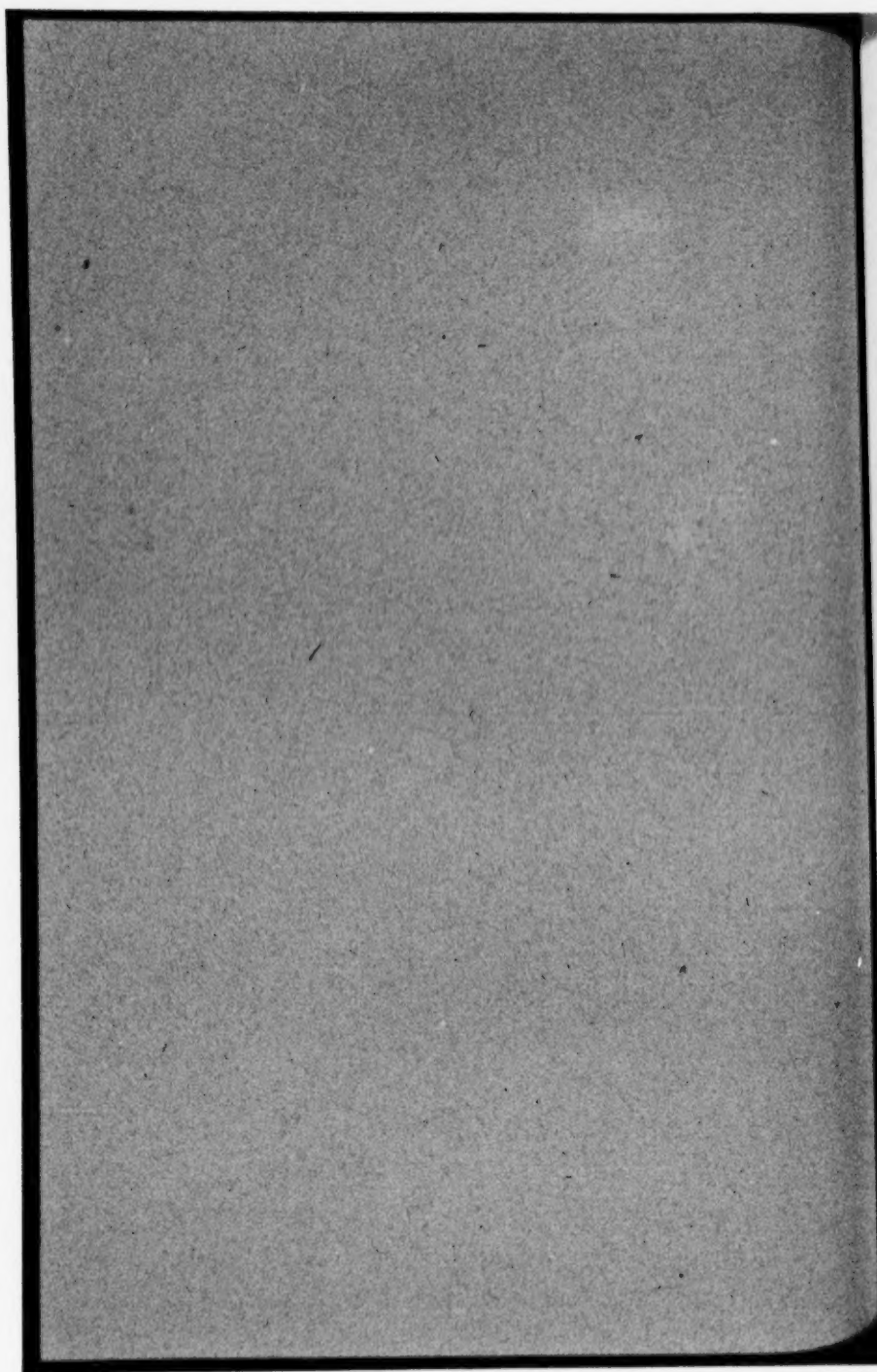
ON PETITION FOR WRIT OF HABEAS CORPUS TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**ANSWER AND BRIEF OF RESPONDENT IN  
OPPOSITION TO PETITION FOR WRIT  
OF HABEAS CORPUS.**

**WILLIAM H. BECKMAN,  
GEORGE C. ADAMS,**

*Attorneys for Respondent,  
Nellie Jeffries.*

**DANIEL M. HEALY,  
CHARLES F. HOUGH,**  
*Of Counsel.*



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AS TRUSTEE, ETC.,

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VS.

NELLIE JEFFRIES AND HARPER FRENCH,  
*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

ANSWER AND BRIEF OF RESPONDENT IN  
OPPOSITION TO PETITION FOR WRIT  
OF CERTIORARI.

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*To the Honorable Chief Justice and the Associate Justices  
of the Supreme Court of the United States:*

Respondent urges that the Petition for Writ of Certio-  
rari to the United States Circuit Court of Appeals for  
the Seventh Circuit should be denied.



### Jurisdiction.

We concede the jurisdiction of this Court under the Certiorari Act to consider a petition for Writ of Certiorari.

### I.

#### Matter Involved.

Harper French, a total stranger and a resident of Illinois or Michigan, filed a Complaint in the United States District Court for Northern Illinois against Nellie Jeffries, William Jeffries, Jr., Charles R. Aiken, administrator *de bonis non* of the Estate of William Jeffries, deceased, Draper & Kramer, and the Chicago Title and Trust Company, all of Chicago, Illinois, in which he pretended to be a half brother of the deceased and that he had loaned him \$3,000 during his lifetime.

The matter was referred to a Master, and French abandoned his attorney, Ferguson, and appeared with Charles R. Aiken, administrator *de bonis non*, a defendant and attorney for William Jeffries, Jr., a defendant, and admitted fraud and collusion at the first hearing. French testified under oath that he was not a brother of the deceased, that he had not loaned the deceased \$3,000, and was not interested in the estate in any way whatsoever and wanted the suit dismissed. Plaintiff's attorney, Ferguson, moved to dismiss the Complaint and Nellie Jeffries' attorney, Adams, moved to dismiss her Cross Complaint and to have the suit dismissed for want of jurisdiction, but defendant Aiken (who now represents plaintiff and defendants) objected, and the Master sustained the objection. (Rec. 272-274.)

The Master while passing upon the motion to dismiss observed: "The Master: Well, while we are on that

subject, I might make another observation. The Master, you know, lives by his fees here. What assurance am I going to have I am going to get my fees? The plaintiff is abandoning his case and the cross complainant is debating whether he would like to or not." (Rec. 270.) After receiving assurance from the administrator, Aiken, defendant and attorney for plaintiff and defendants, that his fees would be paid, the objection to dismissing the case was sustained. (Rec. 270.)

The Master accepted \$2,500.00 as a fee from the administrator Aiken during the trial (Exhibit 2493), before the decree was entered fixing or allowing the same, after he made the above statement that he lived upon his fees and the administrator Aiken offered to pay him.

## II and III.

### Exercise of Jurisdiction.

#### Questions Presented, A to G.

We contend that the case at bar presents no circumstance which warrants the grant of certiorari in this cause:

(A) French, a total stranger or outsider, admitted that he was not a brother and had no claim when the suit was filed.

(B) The suit was filed as a fraud and collusion and should have been dismissed under the Statute (Chapter 3, Section 80, (Judicial Code Section 37), p. 578 of U. S. C. A. Title 28).

(C) No legitimate claim for \$3,000 ever existed (*North Pacific, et al. v. Saley*, 275 U. S. 216).

(D) French and his attorney, Ferguson, moved to dismiss suit and Nellie Jeffries, cross complainant, by Adams, joined in the motion (Rec. 272-274).

(E) After the motion of the plaintiff and cross complainant was made, the Court wrongfully took under advisement their motion and permitted the defendant, William Jeffries, Jr., the right to file a pretended Counter Complaint to prevent the case from being dismissed. At that time Ferguson ceased to act as attorney for French and Aiken, defendant and attorney for the defendants, began to act as attorney for French, and advanced plaintiff French several large sums of money. (Rec. 1631-1716.)

(F) The burden of establishing jurisdiction of the Federal Court is upon the plaintiff and remains throughout the trial. Harper French, plaintiff, is not the petitioner.

(G) The petitioners, defendants, in the fraudulent and collusive suit cannot assume the burden of their co-conspirators, French, the plaintiff, of establishing jurisdiction in a case which he abandoned and admitted his fraud under oath while testifying for them. Jurisdiction as to amount and diversity of citizenship cannot be waived. The plaintiff did not have a claim for any amount when the suit was filed and he was a resident of Chicago.

The petition in the instant case does not present a question for review on writ of certiorari, as defined by Rule 38, 5 (a), (b), (c).

#### IV.

#### **Answer of respondent to Petition and reasons relied upon for denial of the writ of certiorari.**

(1) The petitioners admit on page 2 of the Petition and page 15 of the Brief that the suit was filed by fraud and collusion and the plaintiff had no legitimate

claim. The cases cited on page 6 (A) sustain the position of the respondent that the suit should have been dismissed.

(2) Answering A to G, respectively, the decision of the Circuit Court of Appeals for the Seventh Circuit is not untenable and is not in conflict with applicable decisions of this Court, and the citations of authorities, pages 6 to 10, respectively, sustain the position of the respondent, as will more fully appear in respondent's Brief.

The petition for certiorari should be denied.

## BRIEF.

## PROPOSITIONS OF LAW RELIED UPON.

## I.

## Jurisdiction.

The United States District Court was without jurisdiction because there was no bona fide claim for \$3,000 or more, no diversity of citizenship, or no Federal Statute or Law involved, and the United States Circuit Court of Appeals was justified in its findings.

U. S. Annot. Stat. Sec. 41, Para. 1.

*Baltimore, etc. v. Larwill*, 93 N.E. 619; 34 L. R. A. (N. S.) 1195.

*Edward Sales Co. v. Harris Structural Steel Co.*, 17 F. (2d) 155.

*Farmers, etc. Bank v. Federal Reserve Bank*, 275 F. 235.

(A) The burden of establishing jurisdiction of the Federal Court is upon the plaintiff and remains through the trial.

*McNutt v. General Motors Accept. Corp.*, 298 U. S. at 178, 189.

*Kvos v. Associated Press*, 299 U. S. 269.

*Handley-Mack Co. v. Godcheaux Sugar Co.* (C. C. A. Tenn., 1924) 2F. (2d) 435.

(B) The jurisdiction of a Court of the United States as to amount and diversity of citizenship cannot be waived.

*Pennsylvania v. Williams*, 294 U. S. 176.

*Gordon v. Washington*, 295 U. S. 30, 35, 36.

(C) The plaintiffs in good faith in choosing a Federal form is open to challenge not only by resort to the face of the complaint, but facts disclosed at the trial, and if from either source it is clear that this claim never could have amounted to the sum necessary to give jurisdiction, the case will be dismissed.

*St. Paul Mercury Indemnity Co. v. Red Cap Co.*,  
303 U. S. 283.

*Operators Piano Co. v. First Wisconsin Trust Co.*,  
283 F. 904.

*Hayward v. Nordberg Mfg. Co.*, 85 F. 4.

(D) The case should be dismissed if the evidence shows fraudulent statement of value to give jurisdiction or that the plaintiff cannot legally be permitted to sustain his claim.

*North Pac. S. S. Co. v. Soley*, 257 U. S. 216.

*Horst v. Merkley*, 59 F. 502.

*Simon v. House*, 46 F. 318.

*N. American Transport & Trading Co.*, 178 U. S.  
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(E) The collusion and fraud in making of parties and claiming amounts to establish jurisdiction is ground for dismissing.

*Coffin v. Haggin*, 11 F. 224.

*Lehigh Min. & Mfg. Co. v. Kelly*, 160 U. S. 342.

*Cilley v. Patten*, 62 F. 500.

*Hayden v. Manning Southern Pacific Co. v. Eshelman*, 106 U. S. 588 (D. C. Calif. 1914) 227 F. 928.

*Marvin v. Ellis*, 9 F. 367.

(F) Under Judicial Code Section 24, 28 U.S.C.A. Section 41, filing of counterclaim by the defendant of a suit does not give the Court jurisdiction of the suit not involving jurisdictional amount.

*Home Life Insur. Co. v. Sipp*, 11 F. 2d 474.

*Industrial & Mining Guaranty Co. v. Electrical Supply Co.*, 58 F. 732.

(G) The jurisdiction of the Court was excluded by the pendency of an action in the Probate Court of Cook County and could not be waived even if the parties consented thereto.

*Pac. Coast Pipe Co. v. Conrad City Water Co.*, (D. C. Mont. 1916) 237 F. 673, affirmed 245 F. 846.

*Primos Chemical Co. v. Fulton Steel Corp.* (D. C. N. Y. 1918) 254 F. 454.

It is the duty of the Court, of its own motion, to dismiss a case, whenever it shall be made to appear that the facts upon which jurisdiction depends do not exist.

*Horst v. Merkley*, 59 Fed. 502.

*Maxwell v. Atchison, T. & S. F. R. R. Co.*, 34 Fed. 286.

**BRIEF AND ARGUMENT IN SUPPORT OF  
ANSWER TO PETITION FOR WRIT  
OF CERTIORARI.**

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**I.**

**Jurisdiction.**

The Court was without jurisdiction because there was no bona fide claim for \$3,000 or more, no diversity of citizenship, or no Federal statute or law involved.

**MAY IT PLEASE THE COURT:**

On the 25th day of March, 1943, Harper French filed the above entitled cause, at which time he fraudulently pretended that he was a brother and an heir of William Jeffries, Sr., and that he had loaned him \$3,000.00, as set forth in the said complaint. He further fraudulently pretended that he was a resident of Detroit, Michigan, instead of Chicago, Illinois, his real residence, and thereby sought to obtain the jurisdiction of this Court.

On June 30, 1943, French appeared before the Master in company with Aiken, administrator *de bonis non*, a defendant and attorney for defendants, instead of Henry C. Ferguson who was presumed to be representing him, at which time he took the witness stand (Rec. 22) and testified that he was not a brother and that the Estate was not indebted to him in any sum or sums whatsoever and that the suit had been collusively and fraudulently filed, thereby destroying any jurisdiction that this Court may have had over him.



Henry C. Ferguson, as his attorney, moved to dismiss the case and George C. Adams, representing Nellie Jeffries, the defendant and counter complainant, moved to dismiss (Tr. 266). Mr. Aiken, a defendant, representing William Jeffries, Jr., one of the defendants and who had previously questioned the jurisdiction of the Court in his answer, objected to the motion of the plaintiff and the defendant and counter complainant, and the Master wrongfully sustained the objection thereby wrongfully forcing the case to trial before him, when it was very apparent the Court did not have jurisdiction.

On July 8, 1943, the administrator and William Jeffries, Jr., filed what purported to be a Counterclaim and Crossclaim (Tr. 128), thereby seeking to prevent the dismissal of the above entitled cause for lack of jurisdiction which had been destroyed by Harper French who testified the case was filed fraudulently.

On July 19, 1943, Nellie Jeffries moved to strike the Counterclaim and Crossclaim, which said motion was referred to the Master, over the objection of Nellie Jeffries (Tr. 134).

On August 10, 1943, Nellie Jeffries by petition asked leave to take the deposition of Dr. Abraham Fellman of Detroit, Michigan, who had previously signed an affidavit stating that Harper French, the plaintiff, was an incompetent person, that he suffered from tabes dorsalis and that his mental and physical condition were progressively getting worse and that he didn't know right from wrong (Ex. 2415A).

On October 7, 1943, a motion was made before the Honorable Philip L. Sullivan suggesting to the Court the feeble mindedness and insanity of Harper French and a motion to dismiss the suit because the Court did not have jurisdiction (Tr. 144), together with a petition of Nellie Jeffries (Tr. 145) to said motion. The motion

and petition were referred to Master McDonald, over the objection of Nellie Jeffries. Neither French nor his attorney Ferguson objected, but Aiken, administrator *de bonis non* and defendant, did. The Master who had received a large fee from Aiken rendered a report finding that the Court had jurisdiction, notwithstanding the fraud perpetrated upon the Court by Harper French, as above stated, and notwithstanding the fact that his physician stated that he was a feeble minded person (Tr. 178), to which objections were filed by Nellie Jeffries (Tr. 171). An order was entered on December 17, 1943, approving the said report and enjoining Nellie Jeffries from appearing in the Probate Court, or any other Courts, where she had a petition pending asking for an order compelling the administrator to file a current report and account, in pursuance to the Statute in such cases made and provided (Tr. 181). There was at that time also pending, an appeal in the Appellate Court from an order of the Superior Court of Cook County. A notice of appeal was filed from the order as to jurisdiction but was not perfected, inasmuch as the matter of the final testimony was still pending before the Court, and the Master again in his final report ruled that the Court had jurisdiction, to which Nellie Jeffries again filed objections, and this appeal was taken.

The Court was without jurisdiction because of the evidence given by the plaintiff, Harper French, a feeble minded man, which showed conclusively that there is not a diversity of citizenship or an amount of over \$3,000.00 involved or a Federal question or that the claim arises under some law or Statute of the United States.

**The Judicial Code Section 37, which is continued in effect by Civil Procedure Rule 12 (h), provides:**

“If in any suit commenced in a District Court, or removed from a State Court to a District Court of

the United States, it shall appear to the satisfaction of the said District Court, at any time after such suit has been brought or removed thereto that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said District Court, or that the parties to said suit have been improperly or collusively made or joined either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, at that time said District Court shall proceed no further therein, but shall dismiss the suit or remand to the Court from which it was removed, as justice may require and shall make such order as to the costs as shall be just."

(A) If the defendant challenges the plaintiff's allegations of jurisdictional facts in any appropriate manner, the plaintiff must support them by competent proof and justify them by a preponderance of the evidence.

*McNutt v. General Motors Acceptance Corp.*, 298 U. S. at 178, 189.

The burden of establishing the jurisdiction of the Federal Court is throughout the case, and is at all times on the plaintiff, and this burden never shifts.

*McNutt v. General Motors Acceptance Corp.*, 298 U. S. 178.

*KVOS v. Associated Press*, 299 U. S. 269.

(B) The jurisdiction of a Court of the United States as a Federal Court in the strict sense, viz., as regards jurisdictional amount, diversity of citizenship and Federal question cannot be waived.

*Pennsylvania v. Williams*, 294 U. S. 176.

*Gordon v. Washington*, 295 U. S. 30, 35, 36.

(C) The plaintiff's good faith in choosing a Federal forum is open to challenge not only by resort to the face

of the complaint, but facts disclosed at the trial, and if from either source it is clear that this claim never could have amounted to the sum necessary to give jurisdiction, the case will be dismissed.

(D) To dismiss is the Court's duty under the act of 1875. In such original actions it may well be that the plaintiff and the defendant have colluded to confer jurisdiction by the method of one claiming a fictitious amount and the other failing to deny the veracity of the averment of the amount in controversy. Upon disclosure of that state of facts the Court should dismiss.

*St. Paul Mercury Indemnity Co. v. Red Cab Co.*,  
303 U. S. 283.

*Operators Piano Co. v. First Wisconsin Trust Co.*,  
283 Fed. 904.

*Hayward v. Nordberg Manufacturing Co.*, 85 Fed. 4.

(E) The case should be dismissed if the evidence shows fraudulent statement of value to give jurisdiction or that the plaintiff cannot legally be permitted to sustain his claim.

*North Pacific S. S. Co. v. Soley*, 257 U. S. 216.

*Horst v. Merkley*, 59 Fed. 502.

*Simon v. House*, 46 Fed. 318.

*North American Transport & Trading Co.*, 178  
U. S. 262.

(F) For collusion in obtaining jurisdiction, Section 5 of the Act of 1875 says that the Court must guard itself against fraudulent collusion to obtain jurisdiction. This means combination of any kind by which jurisdiction is obtained fraudulently; and when the evidence discloses the fact; or where the ground on which jurisdiction is sought is frivolous or fictitious. The fraudulent making of parties is grounds of dismissing. When the case is dishonestly

brought to force a compromise, and the fact develops in the evidence it is the duty of the Court to exercise its power to dismiss.

*Coffin v. Haggin*, 11 Fed. 224.

*Lehigh Min. & Mfg. Co. v. Kelly*, 160 U. S. 342.

*Cilley v. Patten*, 62 Fed. 500.

*Hayden v. Mannix*, 106 U. S. 588.

*Marvin v. Ellis*, 9 Fed. 367.

(G) Under Judicial Code Section 24, 28 U. S. C. A. Section 41, filing of counterclaim by the defendant of a suit does not give the Court jurisdiction of the suit not involving jurisdictional amount.

*Home Life Insur. Co. v. Sipp*, 11 Fed. 2d 474.

*Industrial & Mining Guaranty Co. v. Electrical Supply Co.*, 58 Fed. 732.

When it appears from the plaintiff's own testimony that one of the causes of action pleaded never had any existence, and the remaining matters are of not sufficient value to support the jurisdiction, the case must be dismissed.

It is the duty of the Court, of its own motion, to dismiss a case, whenever it shall be made to appear that the facts upon which jurisdiction depends do not exist.

*Horst v. Merkley*, 59 Fed. 502.

*Maxwell v. Atchison, T. & S. F. R. R. Co.*, 34 Fed. 286.

The burden of establishing the jurisdiction of the Federal Court is throughout the case at all times on the plaintiff and this burden never shifts. Neither Harper French nor his attorney attempted to show the Court had jurisdiction, but on the contrary conceded the lack of jurisdiction, but Mr. Aiken assumed that obligation, notwithstanding the fact that he was the administrator of the Estate and attorney for a defendant; Mr. Aiken, the administrator

and a defendant, William Jeffries, Jr., a defendant and resident of Chicago and represented by Mr. Aiken and Mr. Clanton, Nellie Jeffries' former attorney, without diversity of citizenship and without any Federal question involved, attempted to show that the Court did have jurisdiction, notwithstanding the collusion and fraud, as above stated.

The Court wrongfully restrained Nellie Jeffries from demanding an accounting from Charles R. Aiken, thereby permitting him to collect large sums of money and spend them at his will, without an order of any Court or any other authority whatsoever (Tr. 196-7), (Rec. 1389, and particularly Rec. 1397-8), at which time he admitted giving checks to Master Charles A. McDonald (Rec. 1452-58). The administrator admitted that he had deposited the funds of the Estate in the checking account of Charles R. Aiken and Evelyn Aiken, his wife, at the Northern Trust Company (Ex. 2488 C) and had co-mingled the funds with his private funds, and that he had also deposited large sums of funds in the American National Bank and Trust Company in the partnership account of Aiken, McCurry, Bennett & Cleary (Ex. 2488 G). The evidence further showed that F. Harold Bennett, a law partner, was the only person who had a right to draw checks upon the said partnership funds (Rec. 1571). There was a balance in the account of \$2,438.63. Aiken testified (Rec. 1391) about \$1,200 belonging to Jeffries estate, and that (Rec. 1397) he paid the Master and others.

The account at the Northern Trust Company was in Charles R. and Evelyn P. Aiken (Rec. 1452). There was a balance of \$3,000 belonging to the Estate (Rec. 1455) after he had paid various sums. There were several hundred dollars in the personal joint account belonging to the Estate (R. 1474), then three or four hundred, he didn't know.

A representative from the LaSalle National Bank produced the balance sheet showing a balance of \$1,797.91 (Rec. 1545) and from the Northern Trust Company, showed a balance of \$112.37 in the joint checking account, and \$5 in their savings account (Rec. 1547-8).

The Court refused to restrain Mr. Aiken from further spending the money without a court order and referred appellant's petition to the Master who had received part of the money.

(H) The Circuit Court of Appeals was justified in failing to pass upon the motion to dismiss the appeal because it was predicated upon a supposed fraudulent decree entered December 7, 1944, without notice and upon fraudulent representation that it was by and with the consent of Nellie Jeffries and that the attorneys who O.K.'d the decree were representing her, when in truth and in fact it was by collusion and fraud, and a Bill is now pending in the nature of a Bill of Review to set aside the fraudulent decree and asking that certain of the defendants be held for contempt for attempting to perpetrate such fraudulent action. This matter was called to the attention of the Circuit Court of Appeals and they were furnished a photostat copy of the said decree exposing said fraud.

#### CONCLUSION.

WHEREFORE, respondent respectfully prays that the petition for certiorari be denied.

WILLIAM H. BECKMAN,  
GEORGE C. ADAMS,

*Attorneys for Respondent,  
Nellie Jeffries.*

DANIEL M. HEALY,  
CHARLES F. HOUGH,  
*Of Counsel.*

